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IN THE

Supreme Court of The United States

OCTOBER TERM, 1961

NO. 928

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL NUMBER 1810, RALPH A. MASSEY AND THOMAS J. BURKE,

Petitioners,

versus

GEORGIA PORTS AUTHORITY,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PRELIMINARY STATEMENT

Pursuant to Rule 40, paragraph 3, of the Rules of this Honorable Court, Respondent adopts as correct the statement contained in the Petition with respect to OPINION BELOW (Petition, p. 2), except that Appendix A to the petition on page 21, beginning at line 16, should read as follows:

> "The Ports Authority did not respond to the letter or execute the contract. It was alleged that on December 8, 1960, the defendants caused pickets to be placed before both entrances to the Garden City Terminals of the Ports Authority carrying signs reading 'States Docks Unfair to ILA, AFL-CIO'. The warehouse employees of the Ports Authority and the longshoremen, members of the local union, refused to cross the picket lines. The

reason for the picketing was to force the Ports Authority to sign the proposed contract, which proposal as to employment would be in violation of the laws of Georgia. (Code, Ann., Secs. 54-902, 54-801, 54-804; Ga. L. 1947, pp. 616-621) It was further alleged that the defendants were seeking through picketing to compel the Ports Authority to recognize the defendant union organization as the exclusive bargaining agent of its warehouse employees and to execute the proposed labor contract which the Ports Authority is not required to do as a political subdivision of the state and, as such, is immune from any picketing by the defendants."

Respondent also adopts as correct the statements contained in the petition with respect to CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED (Petition, pp. 3-5).

Respondent adopts Petitioners' STATEMENT OF THE CASE.

JURISDICTION

While the Supreme Court of the United States has jurisdiction to review the decision rendered by the Supreme Court of Georgia [28 USCA 1257 (3)], the Respondent respectfully submits that in the exercise of sound judicial discretion the United State Supreme Court will deny review since the decision of the Georgia Supreme Court did not involve a federal substantive question not heretofore decided by this Court nor was such decision discordant with applicable decisions of this court.

QUESTIONS FOR DECISION UPON PETITION FOR CERTIORARI

1.

Whether or not sound judicial discretion will allow a writ of certiorari herein when the decision

of the Supreme Court of Georgia has not decided a federal question of substance not theretofore decided by the Supreme Court of the United States and does not conflict with any decisions thereof.

2

Whether or not the right of a State to be free from strikes and picketing is abrogated by any other right or privilege under either the Constitution of the United States or Federal Legislative Enactment.

REASONS FOR REFUSING TO GRANT THE WRIT OF CERTIORARI

POINT ONE

THE GEORGIA PORTS AUTHORITY IS AN INSTRUMENTALITY OF THE STATE OF GEORGIA AND THEREFORE NOT AN EMPLOYER WITHIN THE MEANING OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED.

The decision of the Supreme Court of Georgia does not, as petitioners allege, establish any new principles of law which infringe upon rights guaranteed to employees under Section 7 of the National Labor Relations Act, as amended.

The National Labor Relations Act, as amended, Section 2(2), states in part as follows:

> "The term 'employer' . . . shall not include . . . any state or political subdivision thereof." 29 U.S.C.A. Sec. 152(2)

Section 2(3) of the Act states in part as follows:

> "The term 'employer' . . . shall not include any individual employed . . . by any . . . person who is not an employer as herein defined." 29 U.S.C.A. Sec. 152(3)

Thus, the rights enjoyed by employees under Section 7 of the Act are accorded only those who are employees within the meaning of the Act. Since political subdivisions of a state are specifically excluded from the term "employer", employees of these political subdivisions cannot be "employees" within the meaning of the Act. Therefore, the principal issue with respect to the propriety of the picketing of the Georgia Ports Authority is whether the Georgia Ports Authority is a political subdivision of the State of Georgia. It is submitted that this issue is well settled by legislative enactment and judicial precedent.

Section 98-202, Code of Georgia, states as follows:

> "Creation of Authority as body corporate; powers. —There is hereby created a body corporate and politic, to be known as the Georgia Ports Authority, which shall be deemed to be an instrumentality of the State of Georgia and a public corporation, and by that name, style, and title the said body may contract and be contracted with, sue and be sued, implead and be impleaded, and complain and defend in all courts of law and equity. (Acts 1945, pp. 464, [illegible]; 1949, pp. 778, 779; 1955, pp. 120, 121)

In addition to this declaration by the Georgia legislature, the Supreme Court of Georgia has held that such bodies are instrumentalities of the State. *Signan v. Brunswick Port Authority*, 214 Ga. 332, 104 S.E. 2d 467. This specific holding is also found in the opinion of the Supreme Court of Georgia which is the subject of this petition. Unless the legislature and highest Court of the State of Georgia are deemed unable to determine which units are political subdivisions of the State of Georgia, the Georgia Ports Authority is a political subdivision and instrumentality of that State.

POINT TWO

IT IS AGAINST THE PUBLIC POLICY OF THE STATE OF GEORGIA FOR STATE EMPLOYEES TO STRIKE.

The trial court held and the Supreme Court of Georgia affirmed that as a matter of law it is against the public policy of the State of Georgia for state employees to strike. This holding is in accord with the decisions reached by the courts in other states faced with the same or similar problems. See, e.g. *State v. Brotherhood of R. Trainmen*, 37 Cal. 2d 413, 232 P. 2d 857, cert. den. 342 U.S. 876; *Nutter v. City of Santa Monica*, 74 Cal. App. 2d 831, 168 P. 2d 741; *Port of Seattle v. Longshoremen's Union*, ____ Wash. ____, 324 P. 2d 1099; *Norwalk Teachers' Asso. v. Board of Education*, 138 Conn. 269, 83 A. 2d 482.

Under such circumstances, the Supreme Court of Georgia found the picketing to be for an illegal purpose and, therefore, enjoinable under Georgia law. *Woodard v. Collier*, 210 Ga. 239, 78 S.E. 2d 526; *Ellis v. Parks*, 212 Ga. 540, 93 S.E. 2d 708.

POINT THREE

THE DECISION BELOW DOES NOT CONFLICT WITH ANY DECISION OF THIS COURT, ANY STATUTE OR THE CONSTITUTION OF THE UNITED STATES.

The decision of the Georgia Supreme Court in no way conflicts with the Constitutional guarantee of free speech under the First and Fourteenth Amendments to the United States Constitution. This Court has repeatedly recognized the limitations necessarily im-

posed on such rights. For example, when the Hatch Act was held constitutional although it abridged the rights of governmental employees to engage in certain political activities, the Court held:

> "Of course, it is accepted constitutional doctrine that these fundamental human rights are not absolute. The requirements of residence and age must be met. The essential rights of the First Amendment in some instances are subject to the elemental need for order without which the guarantees of civil rights to others would be a mockary."
>
> *United Public Workers v. Mitchell*, 330 U.S. 75, 95.

This court has repeatedly held that picketing for an unlawful object is not constitutionally privileged and may be banned by the States. *NLRB v. Fansteel Corporation*, 306 U.S. 240 (sitdown strikes); *Southern SS Co. v. NLRB*, 316 U.S. 31 (mutinies); *Allen-Bradley Local 1111 v. WERB*, 315 U.S. 749 (violent strikes and picketing); *NLRB v. Sands Manufacturing Co.*, 306 U.S. 332 (picketing in violation of contract). As this Court stated in *Hughes v. Superior Court*, 339 U.S. 460:

> "The domain of liberty, withdrawn by the Fourteenth Amendment from encroachment by the states, *Palko v. Connecticut*, 302 U.S. 319, 327, 58 S.Ct. 149, 153, 82 L.Ed. 288, 293, no doubt includes liberty of thought and appropriate means for expressing it. But while picketing is a mode of communication, it is inseparably something more and different. Industrial picketing is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated. . . However

general or loose the language or opinions, the specific situations have controlled decision. It has been amply recognized that picketing, not being the equivalent of speech as a matter of fact, is not its inevitable legal equivalent. Picketing is not beyond the control of a State if the manner in which picketing is conducted or the purpose which it seeks to effectuate gives ground for its disallowance. . . . A state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual." 339 U.S. at 464-65.

This Court further defined the state's right to enjoin picketing in *Local Union No. 10 v. Graham*, 345 U.S. 192, wherein the Court said:

"The basic question here is whether the Commonwealth of Virginia, consistently with the Constitution of the United States, may enjoin peaceful picketing where it is carried on for purposes in conflict with the Virginia Right to Work Statute. A question also before us is whether the record in this case justifies the findings, made below, that picketing was for such purposes. We answer each in the affirmative." 345 U.S. at 193.

Thus, this court has recognized the precise holding of the court below: that a State has the right to limit strikes and picketing carried on for an illegal purpose.

POINT FOUR

THE NATIONAL LABOR RELATIONS BOARD HAS CONSISTENTLY REFUSED TO ASSERT JURISDICTION OVER EMPLOYERS SIMILAR TO THE GEORGIA PORTS AUTHORITY.

"Political subdivision", *within the meaning of this particular Act*, has been defined by the National Labor Relations Board on several occasions when it was

called upon to assert jurisdiction over a particular employer or labor dispute. The construction given the term "political subdivision" by the NLRB has unanimously and continually denied Federal jurisdiction over employers like and similar to the Respondent here. This, of course, means that this area of regulation has not been preempted and state courts and agencies may take appropriate action. The term should be defined then in the light of whether or not the NLRB will assert jurisdiction.

The National Labor Relations Board in the matter of *New Bedford Steamship Authority*, 127 NLRB 1322, 46 LRRM 1173 (1960), concluded that the New Bedford Steamship Authority was not an "employer" over whom the Board had jurisdiction. In reaching this conclusion, the Board relied principally on two factors:

(1) The statute creating the Authority contained the categorical statement that the Authority is performing "essential government functions".

(2) The Authority's property and income are tax exempt.

Section 98-217, Code of Georgia, states as follows:

"Declaration of public purpose in creation of Authority. Tax Exemption.—It is hereby found, determined and declared that the creation of the Authority and the carrying out of its corporate purpose is in all respects for the benefit of the people of this State and is a public purpose and that the Authority will be performing an *essential governmental function* in the exercise of the power conferred upon it by this Chapter and *this State covenants with the holders of the bonds that the Authority shall be required to pay no taxes* or assessments upon any of the property

> acquired by it or under its jurisdiction, control, possession or supervision or upon its activities in the operation or maintenance of the facilities erected, maintained or acquired by it or any fees, rentals or other charges for the use of such facilities or other income received by the Authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the State (Acts 145, pp. 464, 477) (Emphasis added)

The language of the above-cited Georgia Code Section clearly brings the Georgia Ports Authority within factors (1) and (2) above from which the National Labor Relations Board concluded that it did not have jurisdiction.

In the *New Bedford* case, the Board notes that the Authority's bonds were classified as bonds of the Commonwealth of Massachusetts, and the bonds of the Georgia Ports Authority are not bonds of the State of Georgia. This differentiating fact becomes immaterial in view of the decision of the NLRB in *New Jersey Turnpike Authority*, 33 LRRM 1528 (cited *with approval* in the *New Bedford* case). There, the NLRB refused to assert jurisdiction over an Authority whose bonds were not backed by the faith and credit of the state. The following decision is quoted in its entirety:

> "Regional Director is sustained in his dismissal of representation petition requesting a union of toll collectors employed by New Jersey Turnpike Authority in operation of its toll highway within the statefl
>
> The New Jersey Turnpike Authority is not an employer within meaning of Section 2(2) of the Act in view of powers, duties, and obligations given to it by state legislature in establishing it as part of state highway department.

"Local 211 of the Textile Workers (AFL) petitioned for a unit of the Turnpike's toll collectors.

"The Turnpike Authority comprises three members appointed by the Governor for a term of five years with advice and consent of the Senate. It was established on January 31, 1950, by Act of the New Jersey State Legislature for the purpose of constructing, operation, and maintaining turnpike projects by issuance of bonds and collection of tolls. The Authority may acquire, hold and dispose of both real and personal property and exercise the power of eminent domain to acquire real property. Neither the faith and credit of the state nor its taxing power is pledged to payment of bonds issued by the Authority, but the bonds and property of the Authority are exempt from taxation."

New Jersey Turnpike Authority (New Jersey). Case No. 4-RC-2245, April 15, 1954, Decisions on Appeals from interim Rulings of Regional Director.

Similarly, in the case of *Mobile Steamship Association, et al*, 8 NLRB 1297, 3 LRRM 226, the National Labor Relation Boards dismissed a representation petition insofar as it pertained to the Alabama State Docks Commission "since that organization is a division of the State of Alabama". The Board held that the Commission was not an "employer" within the meaning of Section 2(2) of the Act. Parenthetically, it should be noted that the definition of "employer" contained in the Act has not been amended since that decision.

It appears abundantly clear that the National Labor Relations Board would not assert jurisdiction over the Georgia Ports Authority since, in view of the Board's

prior decisions, the Authority is not an "employer" within the meaning of Section 2(2) of the Act.

It is also clear that if the National Labor Relations Board is without jurisdiction, the Superior Court of Chatham County was the proper forum for this proceeding and these parties.

POINT FIVE

THE CASES CITED BY PETITIONER AS HAVING ESTABLISHED LAW CONTRARY TO THAT EXPRESSED BY THE COURT BELOW ARE INAPPLICABLE IN THE INSTANT CASE.

The decisions cited by petitioner will be discussed as they are presented on page 12 of the Petition.

In *Weber v. Anheuser Busch*, 348 US 468. there was no contention that the employer was a political subdivision of the state. The corporation involved was the Anheuser Busch Company, a manufacturer of beer, engaged in interstate commerce. The holding in this case can be summarized by saying that suits for injunction based upon conduct violative of the National Labor Relations Act, as amended, as unfair labor practices must be brought before the National Labor Relations Board by an employer who is an "employer" within the meaning of the Act.

Similarly, the case of *Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U.S. 383, is inapposite because involved were two privately owned public utilities. No contention was made that either company was a political subdivision of the State of Wisconsin.

In *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, *Amalgamated Meat Cutters v. Fairlawn*, 353 U.S. 20, and *Guss v. Utah Labor Relations Board*, 352 U.S. 817, this Court established the principle that a refusal to act by the National Labor Relations Board did not entitle the States to power over activities they otherwise would be preempted from regulating. These cases did not involve employers not subject to the Act and, therefore, the principle is wholly inapplicable.

In *Plumbers, Steamfitters, etc. v. County of Door*, 359 U.S. 354, the political subdivision of the state, the County of Door, had no dispute with the Union and, therefore, that case involves different principles from those applied in the case at bar. In *Door*, the county had joined with two contractors in seeking a state court injunction against peaceful picketing. This Court found the county a "person" within the meaning of Section 2(1) of the National Labor Relations Act, as amended. This in no way changes the definition of employer within the meaning of Section 2(2) of the National Labor Relations Act, as amended. Similarly, in *Local Union No. 25 v. New York, New Haven and Hartford R.R. Co.*, 350 U.S. 155, this Court held that a railroad was a person within the meaning of Section 2(1) of the National Labor Relations Act, as amended, and, therefore, could avail itself of the National Labor Relations Board to protect against secondary boycotts. Here, as in *Door*, supra, the employer had no direct relationship with the union but was incidentally involved.

It is submitted that each of the above cited cases is inapplicable to the case at bar since none involves analogous circumstances wherein the two crucial facts present in the instant case are present, i.e., none in-

volves an employer not subject to the Act with a primary dispute with the union.

CONCLUSION

Respondent respectfully submits that this Petition shows no basis upon which the Writ of Certiorari should be granted. Respondent submits further that it has shown this Honorable Court that the decision rendered below was in strict accordance with previous decisions of this Court and adjudicated no new federal question of substance. For these reasons, Respondent respectfully requests that the Writ of Certiorari be denied.

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